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999 E Street, N.W.
Washington, D.C. 20463

2005 NOV 18 P 12: 21

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR:	5552
DATE COMPLAINT FILED:	September 19, 2004
DATE OF NOTIFICATION:	October 12, 2004; March 22, 2005
LAST RESPONSE RECEIVED:	November 29, 2004
DATE ACTIVATED:	September 19, 2005
EXPIRATION OF SOL:	April 29, 2009

COMPLAINANT: Amy Hanmer

RESPONDENTS: Kerry-Edwards 2004, Inc. and
Robert A. Farmer, in his official capacity as treasurer

DNC Services Corporation/Democratic National Committee and
Andrew Tobias, in his official capacity as treasurer

Washington Promotions and Printing, Inc., AKA DemStore.com

**RELEVANT STATUTE
AND REGULATION:** 2 U.S.C. § 441d
11 C.F.R. §110.11

INTERNAL REPORTS CHECKED: FEC Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The complainant alleges that either the Kerry-Edwards campaign or the Democratic National Committee violated disclaimer requirements on a yard sign she inspected and photographed at 2738 Wexford Road, Stow, Ohio. Several photographs of the sign were attached to the complaint. The sign, which read "Kerry Edwards, A Stronger America, www.JohnKerry.com" had no disclaimer. On the lower left of the sign, the following appears: "Patent Pending – DemStore.com."

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Both the Kerry-Edwards campaign and the Democratic National Committee denied they paid for the sign. DemStore.com is an on-line vendor who apparently sold the sign, presumably for a fee. The DemStore.com website indicates that signs can be purchased in unlimited quantities or as few as a single yard sign. Although the sign should have contained a disclaimer, as discussed in more detail below, this Office recommends that the Commission exercise its prosecutorial discretion, dismiss the complaint, and close the file.

II. FACTUAL SUMMARY

In response to the complaint, Kerry-Edwards 2004, Inc. and Robert A. Farmer, in his official capacity as treasurer ("Kerry Committee") stated that "Respondents were not the source of the yards signs [sic] in question, nor did they have any knowledge of, or role in, the creation or distribution of the signs." Kerry Committee Response at 1. The response further stated that the photographs attached to the complaint indicate that the signs were created and distributed by "DemStore.com," whose website indicates that signs identical to the one that is the subject of the complaint could be purchased directly from that entity.

Likewise, in its response, the DNC Services Corporation/Democratic National Committee and Andrew Tobias, in his official capacity as treasurer ("DNC") stated that to the best of the DNC's knowledge, the sign in question was not paid for or produced by the DNC, and points out that the "sign appears to indicate that it was produced by an entity called DemStore.com." DNC Response at 1. According to the DNC, DemStore.com "is not in any way affiliated or associated" with it. *Id.*

Washington Promotions and Printing, Inc., AKA DemStore.com ("DemStore.com") did not respond to the complaint. Its website shows for sale, among a wide array of other products,

the sign in question. According to the website, such yard signs with frame, could be purchased individually for \$3.00, as well as in bulk.

III. ANALYSIS

A "public communication," as defined by 11 C.F.R. §100.26, that expressly advocates the election or defeat of a clearly identified candidate, must contain a disclaimer.

11 C.F.R. §110.11(a)(2).¹ If the communication was not authorized by a candidate, authorized committee of a candidate, or an agent of either, as is suggested in this case, the disclaimer must include the full name and a permanent street address, phone number or World Wide Web address of the person who paid for the sign and state that the communication is not authorized by any candidate or candidate's committee. 11 C.F.R. §110.11(b)(3).

As the vendor who apparently sold the sign, DemStore.com was presumably paid -- and did not itself pay -- for the sign. As noted previously, both the DNC and Kerry Committee denied responsibility for the sign in issue. We have no information that shows that either paid for or authorized it.² Therefore, one likely possibility is that the communication falls under the purview of 2 U.S.C. §441d(a)(3) and 11 C.F.R. §110.11(b)(3), and should have contained the disclaimers specified therein. However, the yard sign has no disclaimer language at all.

As neither the complaint nor the responses indicate who paid for or authorized the sign and it appears that DemStore.com, a sign vendor, would not have done so, the appropriate respondent(s) are not known. While it is possible that the sign in question was one of a larger

¹ Yard signs are not specifically mentioned in the definition of public communication at 11 C.F.R. §100.26 or §110.11(a), but appear to be included in "any other form of general political advertising" referenced in section 100.26. This conclusion is supported by the Commission's specific reference to "signs" in a listing of printed public communications in 11 C.F.R. §110.11(c)(2)(ii).

² See Bob Dart, *Campaigns Push Their Brands*, THE ATLANTA JOURNAL-CONSTITUTION, Feb. 8, 2004, at <http://www.ajc.com/news/content/news/election/0204nation/09polstore.html> (reporting that the Kerry Committee was the only Democratic presidential candidate in the 2004 cycle who did not have a licensing agreement with DemStore.com).

group of signs purchased from DemStore.com, it is equally possible that an occupant of the household at the address specified in the complaint may have purchased a single sign from that vendor or received it at no cost from a friend or family member. Under the circumstances, where complainant has challenged only one yard sign and we have not received other complaints indicating a wide-spread disclaimer problem in the area, it would not be a good use of the Commission's resources to further pursue this matter.

Accordingly, this Office recommends that the Commission exercise its prosecutorial discretion and dismiss the complaint and close the file as to all respondents. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

III. RECOMMENDATIONS

1. Dismiss the complaint as to Kerry-Edwards 2004, Inc. and Robert A. Farmer, in his official capacity as treasurer; DNC Services Corporation/Democratic National Committee and Andrew Tobias, in his official capacity as treasurer; and Washington Promotions and Printing, Inc., AKA DemStore.com.

2. Close the file.

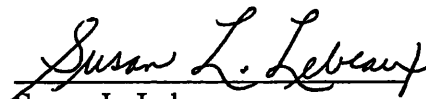
3. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

Lawrence L. Calvert, Jr.
Associate General Counsel
for Enforcement

11/17/05
Date

BY:


Susan L. Lebeaux
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Claire N. Rajan
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